

AN ORDINANCE      101862

AUTHORIZING THE RELEASE OF PAYMENT IN THE AMOUNT OF \$51,071.08 FROM APPROPRIATED CONTRACT FUNDS FOR THE RENOVATION OF THE MEXICAN CULTURAL INSTITUTE UNDERTAKEN IN CONJUNCTION WITH THE HENRY B. GONZALEZ CONVENTION CENTER EXPANSION PROJECT TO MOUNTBATTEN SURETY COMPANY, INC., THE SURETY WHO ISSUED THE REQUIRED PAYMENT BOND FOR THE CONTRACTOR, SANDOVAL CONSTRUCTION COMPANY.

\* \* \* \* \*

**WHEREAS**, a contract was awarded to Sandoval Construction Company (the "Contractor") pursuant to Ordinance No. 93003 passed and approved on November 30, 2000, to renovate the Mexican Cultural Institute (the "Project") as part of the Henry B. Gonzalez Convention Center Expansion Project; and

**WHEREAS**, in accordance with the terms and conditions of the Contract, the Contractor was required to obtain a payment bond from an approved surety company; and

**WHEREAS**, the Contractor executed a General Indemnity Agreement ("Attachment I") with Mountbatten Surety Company, Inc. in order to meet the bonding requirements established by the City; and

**WHEREAS**, disputes arose between the Contractor and its subcontractors and the Contractor withheld payment to subcontractors until such a time as the disputes would be resolved, and

**WHEREAS**, in accordance with the terms and conditions of its contract with Contractor, the City withheld payment to Contractor until such time as all issues between Contractor and its subcontractors were resolved, including a payment in the amount of \$51,071.08; and

**WHEREAS**, two subcontractors have subsequently sued the City, the Contractor and the Surety directly to recover payment for work performed on the Project; and

**WHEREAS**, Surety has now requested that City release the payment of \$51,071.08 to Surety and, by the terms of the General Indemnity Agreement executed by the Contractor and the Surety, the Surety has superior interest in all funds held by City and owed to Contractor over any rights which may be asserted by the Contractor or its subcontractors; **NOW THEREFORE:**

**BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF SAN ANTONIO:**

**SECTION 1.** The release of payment in the amount of \$51,071.08 from appropriated contract funds for the renovation of the Mexican Cultural Institute undertaken as part of the last expansion of the Henry B. Gonzalez Convention Center to Mountbatten Surety Company, Inc. as the surety company for Sandoval Construction Company is hereby authorized.

**SECTION 2.** The City Manager is authorized to execute any and all documents deemed necessary by the City Attorney's Office to meet the purpose and intent of this Ordinance.

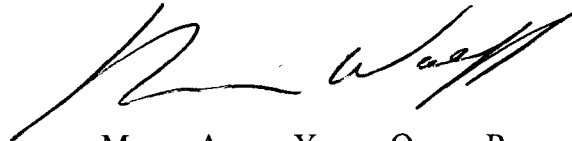
**SECTION 3.** Funds carried forward for this expenditure are available in Fund 47099000, entitled "CONVENTION CENTER CAPITAL PROJECTS," WBS Element Number 42-00002-05-02-01, entitled "City Construction, General Ledger, 5201140, Construction Costs."

**SECTION 4.** Payment not to exceed \$51,071.08 is authorized for payment to Mountbatten Surety Company and should be encumbered on issuance of a purchase order.

**SECTION 5.** The financial allocations in this Ordinance are subject to approval by the Director of Finance, City of San Antonio. The Director of Finance may, subject to concurrence by the City Manager or the City Manager's designee, correct allocations to specific SAP Fund Numbers, SAP Project Definitions, SAP WBS Elements, SAP Internal Orders, SAP Fund Centers, SAP Cost Centers, SAP Functional Areas, SAP Funds Reservation Document Numbers, and SAP GL Accounts as necessary to carry out the purpose of this Ordinance.

**SECTION 6.** This Ordinance shall become effective immediately upon the passage of eight affirmative votes and if eight affirmative votes are not received then after the tenth (10<sup>th</sup>) day after passage hereof.

**PASSED AND APPROVED** this 15<sup>th</sup> day of DECEMBER 2005.



M A Y O R

for

PHIL HARDBERGER

ATTEST:

  
City Clerk

APPROVED AS TO FORM:

  
for City Attorney